

STATE OF MICHIGAN  
COURT OF APPEALS

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JOHN SPAULDING,

Plaintiff-Appellant,

v

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant-Appellee,

and

FARM BUREAU GENERAL INSURANCE  
COMPANY,

Defendant.

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UNPUBLISHED

July 31, 2007

No. 273306

Barry Circuit Court

LC No. 05-000603-NI

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant-appellee Farm Bureau Mutual Insurance Company (defendant).<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing an order granting summary disposition under MCR 2.116(C)(10), we test the factual support for the claims made by examining the pleadings, documents, depositions, affidavits, and other evidence submitted by the parties. *Id.* We review the evidence, and every legitimate inference from the evidence, in the light most favorable to the nonmoving party. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). If the proffered evidence fails to establish a genuine issue of material fact, the moving party is

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<sup>1</sup> Defendant asserts that this Court should refuse to hear this appeal on the ground that plaintiff argues an issue not ruled upon by the trial court. However, we find that the issues on appeal were sufficiently addressed at the summary disposition hearing to render appeal appropriate.

entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Plaintiff's rural home was destroyed by an arson fire. Plaintiff was examined, under oath, pursuant to the terms of a fire insurance policy issued by defendant. Plaintiff testified that he had lived in the insured house since 1972 and had made improvements to the house over the years, but that he had been living with his life partner at her home for about one year before the fire occurred. Plaintiff visited the insured premises on a regular basis, but had shut off the gas and water. Mortgage payments on the insured premises were current at the time the fire occurred.

The policy at issue here provided:

#### POLICY CONDITIONS

##### 14. Increase in Hazard

Unless otherwise provided in writing, we will not be liable for any loss occurring:

- a. While the hazard is increased by any means within your control or knowledge; or
- b. While a described building, whether intended for occupancy by owner or tenant, is vacant beyond a period of 60 consecutive days or is unoccupied beyond a period of six consecutive months.

Defendant refused to pay benefits for the fire loss. Plaintiff sued, alleging breach of contract. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) on the ground that plaintiff had increased the risk by not living in the insured home, notwithstanding the nature of the fire. Plaintiff filed a responsive pleading, seeking time to amend the complaint and asserting that he was in the process of "ascertaining whether or not the mortgagor (sic) will be paid."

At a hearing on defendant's motion, plaintiff argued that he wanted to assert the mortgagee's right under the terms of the policy. Plaintiff claimed that he ought to be able to insist that defendant pay off the mortgage without bringing the mortgagee into the suit.

The trial court granted defendant's motion and dismissed plaintiff's claim, ruling that any amendment would be futile.

The policy issued by defendant contained a "standard" mortgage-loss-payable clause:

##### 11. Mortgage clause.

The term "mortgagee" includes trustee, land contract holder, or title holder.

If a mortgagee is named in this policy, any covered loss under Coverage A-Dwelling or Coverage B-Other Structures will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee. . . .

Michigan law has long held that the provisions of the “standard” mortgage-loss-payable clause amount to a separate contract between the insurer and lender and that because that contract involves the mortgagee’s insurable interest and not the real estate, the owner/mortgagor has no interest in the relationship between the mortgagee and insurer and no standing to sue. *Citizens State Bank v State Mut Rodded Fire Ins Co*, 276 Mich 62, 67; 267 NW 785 (1936); *Gibson v Group Ins Co*, 142 Mich App 271, 278; 369 NW2d 484 (1985).

Plaintiff implies that this Court has previously held that a mortgagor is a real party in interest with standing to assert the mortgagee’s rights, citing *Better Valu Homes, Inc v Preferred Mut Ins Co*, 60 Mich App 315, 319; 230 NW2d 412 (1975). The *Better Valu* Court held that “either [the mortgagor or the mortgagee] would . . . be a real party in interest . . . .” Plaintiff misconstrues the meaning of the Court’s reasoning in this case. *Id.* The *Better Valu* Court’s holding merely states the uncontroversial conclusion that both a mortgagor and a mortgagee have separate standing to enforce their own individual contractual provisions against the insurance company. *Id.* The opinion does not hold that a mortgagor has standing to assert the mortgagee’s claim against the insurance company, and plaintiff’s argument in this regard is unavailing.

We conclude that the trial court properly granted summary disposition for defendant. Plaintiff came forward with no evidence and cited no authority in opposition to defendant’s motion. *Conlin v Scio Twp*, 262 Mich App 379, 384; 686 NW2d 16 (2004). Moreover, where plaintiff had clearly expressed the intent not to reside in the insured property and did not reside in the insured premises for nearly a year, the increase in risk entitled the insurer to assert the policy provision to avoid payment of the plaintiff’s loss. See Anno, *What Constitutes “Vacant or Unoccupied” Dwelling Within Exclusionary Provision of Fire Insurance Policy*, 47 ALR3d 398.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood